IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION
AND

IN ITS JURISDICTION
UNDER THE COMPANIES ACT, 1956

COMPANY PETITION NO.264 OF 2004

In the matter of:
(i) Sections 433, 434 and 439 of the Companies Act, 1956;

And

(ii)winding up of S.S.V.P.Texfin P.Ltd.

Sau Chandrakala N.Manthen .. Petitioner

WITH

COMPANY PETITION NO.265 OF 2004

Surbhi International .. Petitioner

WITH

COMPANY PETITION NO.266 OF 2004

Nagesh L.Manthen (HUF) .. Petitioner

WITH

COMPANY PETITION NO.267 OF 2004

Ramesh L.Manthen .. Petitioner

Mr.V.Joglekar i/b Mr.Basant Trilikani for the petitioners

Ms.Anita Bhaktwani for the company

CORAM: S.U. KAMDAR, J.

DATE : 7TH MARCH, 2005.

P.C. :

1. In the present group of petitions, the petitions are filed by the various petitioners against the same respondent company for the recovery of price of goods sold and delivered by them. The aggregate principal claim as on the date of petition in all the 4 petitions together is sum of Rs.20,42,477.17.

2. The claim is resisted by the company interalia on the ground that there was a sub-standard supply of the goods and therefore nothing is due and payable by respondent to the petitioners herein and infact the petitioners have suffered the loss. It has also been contended that between the parties there were oral discussions and respondent company has informed orally to the petitioners about the sub-standard quality of the goods. It is also contended that the said goods are still lying in the godown at Abu Dhabi. It has been contended that in view thereof the respondent company was justified in not paying the said amount. It has been contended that the respondent company has bonafide disputes as to the quality of the goods sold and delivered by the petitioners.

3. It is an admitted position that there is nothing in writing to indicate that at any point of time prior to issuing of winding up notice respondent has raised the said defence that goods sold are of sub-standard quality. In addition thereto by filing an affidavit in reply respondent has contended that the foreign supplier has rejected the goods by letter dated 22.6.03 which is addressed to the respondent company. Although the said goods are admittedly rejected as far back as 22.6.03 even in reply to the Statutory Notice there is no reference to the said letter dt.22.6.03. Then I do not find any substantial bonafide defence raised by the company. However, with a view to give an opportunity to the respondent company to defend the present claim I pass the following order:

4. (i) Respondent company is directed to deposit in the court a sum of Rs.20.0 lacs within a period of 4 weeks from today. On such deposit being made the petitions to stand dismissed and the petitioners to file the suit within 4 weeks from the date of intimation of such deposit by the Advocate of the

respondent company to the petitioners' advocate. (ii)If such deposit is not made then the petition to stand admitted and advertised in the Free Press Journal, Janmabhoomi and Maharashtra Government Gazette. The petitioner to deposit a sum of Rs.2000/- with the office of the Prothonotary & Senior Master, High Court, Mumbai towards the cost of advertisement. (iii) In an event if the amount is deposited and suit is filed the said amount be invested with the Prothonotary and Senior Master, High Court, Mumbai to the credit of the said suit initially for a period of 3 years and in Fixed Deposit of any Nationalised Bank and renew the same from time to time till further orders. (iv) In an event if such a suit is not filed within a time stipulated then the respondent company will be at liberty to withdraw the said amount from the office of Prothonotary and Senior Master, High Court, Mumbai. Petition disposed of accordingly. No order as to costs.